



AMENDED MINUTES

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
SPECIAL MEETING**

**2:30 p.m., Wednesday, January 25, 2012
Human Resources Pinnacle Training Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
James Butera, Elected Member
Velicia McMillan, Citizen Member/Merit Head

ABSENT: Jeffrey Burg, Citizen Member
Jeffrey Walther, Elected Member

STAFF: Colleen Barraza
Ken Nemec
Chanda Washington

OTHER: Auckland Auckland, Esq.
Joel Friedman, Esq.
Dr. Hines (via telephone)
Police Officer James H. Powers
Julianne Powers

Call to order

Chairman Cross called the meeting to order at 2:32 p.m. He stated that the first order of business was the acknowledgement of Board Members Burg and Walther's excused absences.

Roll call

A formal roll call confirmed the members present as stated above.

1. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer James H. Powers.

Chairman Cross summarized that staff has received the IME reports for Police Officer James Powers' first IME which occurred on July 1, 2011 as well as the second IME which the Board approved during its October 20, 2011 meeting.

He invited the Board Members to ask questions or offer any comments before the Applicant and his attorney present their case and received no responses.

Mr. Friedman stated that they had received both the reports from Dr. Breed and Dr. Hines. He explained that Dr. Hines' suggestion that the disability was the direct result of an event that occurred during Police Officer Powers' performance of his police duties was incorrect, noting that it was indirectly the result of an impact injury he sustained in 2003.

In response to Mr. Friedman's inquiry regarding whether Dr. Hines would be available for questioning by telephone today, Chairman responded that he would be available at 3:00 p.m.

Mr. Friedman stated that pending Dr. Hines' response to certain questions he reserved the right to make any other statements or comments about the claim. He did not submit any new medical evidence since Police Officer Powers' disabling medical condition has not changed since the last Board meeting.

Mr. Friedman stated that since the Board was bound by the opinion of its appointed IME physicians Dr. Hines and Dr. Breed, they did not request that Dr. Burke be available for questioning today. He recalled that Dr. Burke previously stated in his report that he believes the incident in 2003 started the process of a tumor developing and ultimately resulting in a disability.

Chairman Cross confirmed that the Board left the task of ensuring that the second IME physician received all documentation necessary before making his final decision up to Mr. Friedman.

Mr. Friedman opined that Dr. Hines received adequate medical evidence, noting that he does have a few questions for the doctor related to his interpretation of the evidence.

CLOSED PUBLIC HEARING

Chairman Cross inquired whether any Board members would like to recess into executive session to obtain legal counsel and the consensus of the Board was no. Accordingly he directed Ms. Washington to call Dr. Hines' office at 2:40 p.m. However, she was informed that the doctor was unavailable for questioning by the Board until their originally scheduled time of 3:00 p.m. Chairman Cross suggested using the waiting time to take legal advice.

2. Motion to Recess into Executive Session for Discussion of the A.R.S. Sec. 38-844 Retirement Application of Police Officer James H. Powers.

Chairman Cross deemed it necessary to recess into executive session to obtain legal counsel on the accidental disability retirement application of Police Officer James H. Powers.

BOARD MEMBER BUTERA MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF POLICE OFFICER JAMES POWERS' ACCIDENTAL DISABILITY RETIREMENT APPLICATION. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND WALTHER WERE ABSENT.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

1. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer James H. Powers (continued)

Chairman Cross inquired whether there were any additional questions before staff calls Dr. Hines and received no responses.

Ms. Auckland swore in Dr. Hines as a witness to be questioned in the matter of Police Officer James Powers' accidental disability retirement application.

Chairman Cross confirmed that the Board did not have any questions for Dr. Hines at this time and invited Mr. Friedman to question the doctor.

In response to Mr. Friedman's inquiry regarding whether the doctor reviewed any literature during his evaluation process, Dr. Hines responded that he reviewed four or five publications which were supplied to him as well as referencing cardiology textbooks. He stated that a couple of the publications referenced the etiology of the fibroelastoma.

In response to Mr. Friedman's inquiry whether the advances in cardiac imaging technology has improved regarding papillary fibroelastoma, Dr. Hines opined that a good ultrasound was reasonable at making that particular diagnosis for 20 years or more.

Mr. Friedman summarized that the literature he has read indicates that previously fibroelastomas were found principally during other surgeries, autopsies, or after an embolic stroke.

In response to Mr. Friedman's inquiry regarding whether the cause of the embolism was not at issue but rather what to do about repairing the damage caused by the stroke, Dr. Hines stated that it was very likely that the embolism resulted from the fibroelastoma.

In response to Mr. Friedman's inquiry regarding whether the doctor agreed with the consensus that the embolism was caused by the fibroelastoma, Dr. Hines responded that it was very likely.

In response to Mr. Friedman's inquiry regarding what the physical characteristics were of fibroelastoma, Dr. Hines explained that it was extraneous tissue commonly seen growing off the surface of a valve. He stated that the somewhat friable piece of tissue was predisposed to small pieces breaking off and moving to various sections of the body.

Mr. Friedman elaborated that an article from the 2001 Annals of Clinical & Laboratory Science publication indicates there is a theory that the fibroelastomas are commonly called hamartomatous, which are an excess tissue growth from the valve tissue.

Dr. Hines stated that largely a valve was fibrous tissue and these are an insignificant measure of fibrous tissues. He stated that one thing that was different about the physical characteristics was that valve material does not break off and that it was an extraordinarily rare occurrence in a normal or scarred valve.

Mr. Friedman clarified that he was not suggesting it was the same tissue but rather that it was generated from the valve tissue itself and inquired whether that mattered,

Dr. Hines stated that he did not disagree with Mr. Friedman's statement, noting that it was clearly an outgrowth from the valve surface.

Mr. Friedman recalled that Dr. Hines was provided with a copy of an article from the 2010 Journal of Cardiothoracic Surgery publication entitled "Papillary Fibroelastoma of the Aortic Valve, Case Report and Literature Review."

He elaborated that the article indicated that one of the potential causes was "an inflammatory foci due to unusual endocardial responses to infection or hemodynamic trauma."

Dr. Hines recalled reviewing the article and then following up by reviewing the bibliography, noting that it almost became not quite circular, but something close to it. He stated that in the reference they mentioned that there was discussion in the past that this possibly causes it.

Dr. Hines asserted that he was never able to locate evidence in the literature about a study with confirming evidence regarding the mechanism of the development of a fibroelastoma.

Mr. Friedman noted that an article from the 1995 Annals of Clinical & Laboratory Science publication suggests that "mechanical trauma stimulates endothelial cell hyperplasia."

In response to Mr. Friedman's inquiry regarding whether hyperplasia was excess cell growth, Dr. Hines confirmed that the statement was correct.

In response to Mr. Friedman's comment that endothelial refers to the lining of the blood vessels, Dr. Hines confirmed that it was the lining of both blood vessels and the insides of cardiac chambers.

Mr. Friedman recalled that the article reviewed by Dr. Hines referred to hemodynamic trauma and inquired whether there was a big difference between that and endothelial cell hyperplasia.

Dr. Hines opined that the term "mechanical trauma" mentioned in the articles was referencing when a surgeon cuts the tissue, noting that the normal response to such lacerations was fibrosis in the tissue. He pointed out that to a certain mild extent every time the heart beats there is mild hemodynamic trauma to the valve.

Mr. Friedman inquired whether Dr. Hines was familiar with the theories mentioned in the 1996 Annals of Clinical & Laboratory Science article which discuss endothelial cell functions as being sensitive to injury as a result of exposure to cytochemicals, surgical manipulation, and hemodynamic shear stress.

Dr. Hines stated that the concepts were pretty straightforward with the exception of the cytochemicals, explaining that he has not researched that particular relationship between cytochemicals and trauma to the inner chambers of the heart.

In response to Mr. Friedman's statement that the fibroelastoma was an abnormal fibro proliferative response to something, Dr. Hines stated that it depended on how broadly one defines proliferative response. He stated that cancer is a proliferative something and whether it is a response to anything other than an abnormal gene that has mutated is unclear.

Dr. Hines explained that he could not confirm whether the fibroelastoma was the result of some mechanical stimulus to valvular tissue.

Mr. Friedman recalled that the 1996 Annals of Clinical & Laboratory Science article referenced the consequences of injury to the endothelium possibly caused by various chemicals and proteins such as neutrophils, surface proteins, and leukocyte adhesion that are believed to be causative factors in the development of these excess growths.

Dr. Hines commented that any time a part of the body is injured such as cutting one's arm with a knife, there are various types of inflammatory or fibroproliferative responses which result in the development of a scar.

In response to Mr. Friedman's inquiry regarding whether Dr. Hines received the 2006 Critical Care Medicine article that identified immune microenvironment and systemic inflammation as a result of blunt chest trauma, Dr. Hines responded that he did not receive that article for review.

Mr. Friedman elaborated that the article identified early increased cytokine concentrations and was titled "Kupffer Cell Splenocyte Activation and Lung Injury Following Blunt Chest Trauma." Dr. Hines stated that he had no reason to disagree with that statement.

Chairman Cross recalled that the Board directed the Applicant and his attorney to provide Dr. Hines with all documentation they wanted him to review in advance of the IME. He argued that it was very difficult for Dr. Hines to respond to questions related to material not supplied to him previously.

Mr. Friedman expressed his concern that Dr. Hines has not identified his research for literature on this subject, noting that it was difficult to understand that although he has

access to medical information he did not review these articles as well as literature on the consequences of blunt ballistic impact trauma.

Chairman Cross explained that Dr. Hines was chosen because of his numerous years of expertise within this field of medicine, noting that staff also supplied him with all of the medical documentation received prior to the IME.

Mr. Friedman stated that upon receipt of Dr. Hines' IME report he found that he did not do an independent literature research, or that his search was ineffective.

Chairman Cross recalled that Dr. Hines informed staff that he reviewed the literature that he thought was appropriate. He stated that he would allow this line of questioning to go a little further, warning that bringing up information not reviewed by the doctor was inappropriate.

Mr. Friedman stated that the Board was bound to accept Dr. Hines' opinion, even though it was based on very limited sources of information, excluding a study on ballistic impact in law enforcement.

Dr. Hines responded that there is a vast amount of theories related to the potential biological relationships to clinical consequences, and argued that it made no sense to accuse him of doing an inadequate job when preparing his IME report.

Mr. Friedman summarized that all of the biochemical processes he has mentioned were apparently known when the literature was written, noting that blunt ballistic trauma was a known causative factor in the development of soft tissue external and internal injuries.

Dr. Hines agreed stating that people die from internal injuries as a result of horrible external traumatic injuries.

Mr. Friedman argued that they expected Dr. Hines to provide more than a statement that there's no direct evidence that a work related incident caused the fibroelastoma which caused the stroke. Dr. Hines pointed out that he provided his reasoning as to why it was unlikely.

Chairman Cross explained that the Board provided Dr. Hines with questions formulated for the purpose of preparing an IME report prior to his examination of the Applicant, which he answered adequately.

Mr. Friedman stated that he had to pay somebody who has access to medical databases to research information on armor and the affects of bullets hitting armor while worn on the body as well as research on ballistic impact traumas. He suggested that the doctor consider the factors mentioned in this research before offering an opinion on this matter.

In response to Mr. Friedman's inquiry regarding whether fibroelastomas take a long time to develop, Dr. Hines responded that it was probably true since their growth process has not been monitored and they take years to develop.

Mr. Friedman stated that fibroelastomas caused by blunt chest traumas or ballistic impact traumas was not a frequent occurrence. Dr. Hines opined that there were

thousands of cases of bad blunt traumas within the United States every year rarely resulting in the development of a fibroelastoma.

In response to Mr. Friedman's inquiry whether Dr. Hines acknowledges that blunt chest trauma from a non-lethal device has the potential to cause internal damage through a sequence of events such as biochemical changes and the slow development of fibroelastoma, Dr. Hines stated that theoretically this could have occurred.

He explained that he could not prove that the applicant's injury was a result of blunt chest trauma from a non-lethal device.

Chairman Cross confirmed that there were no further questions of Dr. Hines and excused him from the meeting. Ms. Washington thanked the doctor for his time and thorough analysis.

Chairman Cross inquired whether the Board or Police Officer Powers had any further questions or comments. He summarized that both the IME physicians answered question 3 in the same manner, noting that the first IME physician was more specific in his answer to question 4.

Ms. Auckland requested that Mr. Friedman provide copies of the articles he referenced during today's meeting to staff so that they could become part of the record for this matter. Mr. Friedman agreed to email the articles to staff.

BOARD MEMBER BUTERA MOVED TO FIND THAT THE APPLICANT HAS A PHYSICAL OR MENTAL CONDITION WHICH TOTALLY AND PERMANENTLY PREVENTS HIM FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN A POLICE OFFICER CLASSIFICATION. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND WALTHER WERE ABSENT.

BOARD MEMBER BUTERA MOVED TO FIND THAT THE APPLICANT'S DISABLING CONDITION WAS NOT INCURRED IN THE PERFORMANCE OF HIS DUTIES AS A POLICE OFFICER. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND WALTHER WERE ABSENT.

BOARD MEMBER BUTERA MOVED TO FIND THAT THE APPLICANT'S DISABILITY RESULTED FROM A PHYSICAL OR MENTAL CONDITION OR INJURY THAT EXISTED OR OCCURRED PRIOR TO THE APPLICANT'S DATE OF MEMBERSHIP IN THE PSPRS, WHICH IS JUNE 20, 2001. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND WALTHER WERE ABSENT.

BOARD MEMBER BUTERA MOVED TO DISAPPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION OF POLICE OFFICER JAMES H. POWERS SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND WALTHER WERE ABSENT.

3. Board suggestions for upcoming agenda items

Chairman Cross stated that there were no Board suggestions for future agenda items.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 3:33 p.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Police Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee